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Attorneys for Defendant and Cross-Complainant
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**UNITED STATES DISTRICT COURT**

**SOUTHERN DISTRICT OF CALIFORNIA**

| | |
|---|---|
| BROOKMEAD PARTNERS, LP, a Nevada limited partnership,<br><br>Plaintiff,<br><br>v.<br><br>Interinsurance Exchange Of The Automobile Club, a California business entity, Saracia L.P. Shannahan, and William P. Shannahan,<br><br>Defendants. | CASE NO. 08 CV 659 JLS (WMc)<br><br>**CROSS-COMPLAINT IN INTERPLEADER** |
| HIGGS, FLETCHER & MACK, LLP,<br><br>Cross-Complainant,<br><br>v.<br><br>BROOKMEAD PARTNERS, LP, a Nevada limited partnership, SARACIA L.P. SHANNAHAN, and DOES 1-50, inclusive<br><br>Cross-Defendants. | |

Defendant and Cross-Complainant HIGGS, FLETCHER & MACK, LLP ("HF&M"), by and through its attorneys, for its cross-complaint in interpleader alleges as follows:

## I.

## INTRODUCTION

1. This cross-complaint in interpleader is brought pursuant to 28 U.S.C. section 1335 through which HF&M seeks to be discharged from liability for certain insurance proceeds except to the person or entity to whom the Court shall adjudge is entitled to said proceeds.

## II.

## PARTIES

2. HF&M is a California limited liability partnership with its principal place of business in San Diego, California.

3. Plaintiff and Cross-Defendant Brookmead Partners, L.P. is a Nevada limited partnership with its principal place of business in Carson City, Nevada.

4. Defendant and Cross-Defendant Saracia L.P. Shannahan is a resident of La Jolla, San Diego County, California.

5. HF&M is unaware of the true names, capacities, or basis for liability of the Cross-Defendants DOES 1 through 50, inclusive; and, therefore sue(s) said defendants by their fictitious names. HF&M will amend this complaint to allege their true names, capacities, or basis for liability when the same has been ascertained. HF&M is informed and believes, and on such information and belief alleges that: (i) fictitiously-named Cross-Defendants DOES 1 through 50 are persons or entities claiming interests in the monies which are the subject of this cross-complaint.

## III.

## JURISDICTION AND VENUE

6. HF&M brings this cross-complaint for interpleader pursuant to 28 U.S.C. section 1335 because there is more than $500 at stake and there are two or more adverse claimants of diverse citizenship claiming or who may claim entitlement to the same money such that HF&M is or may be exposed to double or multiple liability and the vexation of multiple lawsuits.

7. Venue is proper in the United States District of California, Southern District of

California, pursuant to 28 U.S.C. section 1397 (the district where one or more of the claimants resides).

## IV.

## CAUSE OF ACTION FOR INTERPLEADER

8. Based upon information and belief, Northwest Financial Ltd., a Nevada limited partnership, purchased real estate in La Jolla, California, known as 2677 Brookmead Lane, La Jolla, California (the "Brookmead residence") on November 30, 1987, from an unrelated seller known as Wilbur Breckenridge.

9. Based upon information and belief, on November 30, 1987, Northwest Financial Ltd. As Vendor entered into a land contract with William P. Shannahan as the Trustee of the Shannahan Marital Trust UTA April 28, 1987, as Vendee. Legal title was retained by Northwest Financial, Inc., a Nevada corporation and general partner of Northwest Financial Ltd. as security under the land contract.

10. Based upon information and belief, Shannahan Marital Trust was acting as Trustee for Saracia L.P. Shannahan, a married woman, as her sole and separate property as to an undivided twenty-five percent (25%) interest, William P. Shannahan, a married man, as his sole and separate property as to an undivided twenty-five percent (25%) interest and Shannahan Investments, Inc., a Nevada corporation, Successor to Shannahan Investments, Inc., a California corporation, the separate property of William P. Shannahan as to an undivided fifty percent (50%) interest.

11. Based upon information and belief, the land contract of November 30, 1987, was amended several times, and the final and fourth amendment was executed effective January 1, 2003.

12. Based upon information and belief, Defendants William P. Shannahan and Saracia L.P. Shannahan applied for and received property insurance coverage commonly referred to as the "Homeowner's Policy" issued by Defendant Interinsurance Exchange of the Automobile Club ("AAA").

13. Based upon information and belief, William P. Shannahan and Saracia L.P.

Shannahan and their minor daughter moved into the Brookmead residence on March 18, 1988, and resided there as their principal residence until June 28, 2004, when Defendant Saracia L.P. Shannahan moved out of the residence pursuant to Court order. Defendant William P. Shannahan and his minor son continued to reside in the Brookmead residence until December 15, 2007, when the Brookmead residence was lost to fire.

14. Based upon information and belief, on November 12, 2007, AAA reissued its policy of Homeowner's coverage with Coverage A - Dwelling in the amount of $892,000, Coverage B - Other Structures in the amount of $120,932.60, Coverage C – Contents in the amount of $669,000 and Loss of Use of $178,400.

15. Based upon information and belief, on December 15, 2007, the Brookmead residence was engulfed in flames and subsequently declared a total loss by AAA.

16. In the matter of *In re the Marriage of Shannahan,* on or about April 11, 2008, the Superior Court for the State of California, County of San Diego, through Hon. Thomas Ashworth, III (Ret.), issued an order directing:

> The proceeds of the check from Interinsurance Exchange of the Automobile Club check #5582308 or any replacement check in the amount of $957,525.23 shall be deposited into an interest-bearing segregated client trust account of Higgs, Fletcher & Mack, LLP, on or before close of business April 11, 2008. In the event that the proceeds are not so deposited by that date, then they shall be deposited to an interest-bearing segregated client trust account with the Law Offices of Beatrice L. Snider, APC.

A true and correct copy of Judge Ashworth's Order is attached hereto as Exhibit "A."

17. On or about May 27, 2008, Defendant Interinsurance Exchange of the Automobile Club ("AAA") issued a check in the amount of $957,525.23 (the "Payment") made payable to HF&M. Consistent with Judge Ashworth's Order, HF&M deposited the funds into a segregated client trust account.

18. However, in light of Plaintiff and Cross-Defendant Brookmead Partners' complaint, there are now competing claims to the Payment. These competing claims raise a question as to which cross-defendant is entitled to receive the Payment. HF&M therefore respectfully requests that this Court determine to whom HF&M should make the Payment.

19. Subsequent to filing this cross-complaint for interpleader, HF&M will seek to deposit the full amount of the Payment, $957,525.23, to this Court, via its designated account for such purposes, pursuant to specific instructions from the Clerk of this Court. HF&M will retain no interest in the Payment other than it be considered payment in fulfillment of any obligations under the Judge Ashworth's Order.

20. Based upon information and belief, Cross-Defendant Brookmead Partners has made or may make a claim to part or all of the interpleaded sum.

21. Based upon information and belief, Cross-Defendant Saracia L.P. Shannahan has made or may make a claim to part or all of the interpleaded sum.

22. Each of the cross-defendants is claiming or may claim entitlement to all or part of the interpleaded sum, such that the sum total of the claims exceeds the value of the interpleaded sum.

23. By reason of these conflicting claims of the cross-defendants, HF&M is in great doubt as to which cross-defendant is entitled to be paid from the interpleaded sum.

24. HF&M brings this cross-complaint of its own free will and to avoid being vexed and harassed by conflicting and multiple claims.

25. Until this Court rules on who is the proper party to receive the Payment, HF&M cannot safely hold or disburse monies from the Payment without risking exposure to multiple liability.

26. HF&M has incurred attorneys' fees and costs as a result of these proceedings to date, and will incur additional costs and fees associated with these proceedings. Such attorneys' fees and costs are and should be a legal charge upon the claimants at issue and same should be repaid to HF&M out of the funds deposited with this Court.

WHEREFORE, HF&M demands judgment as follows:

1. Discharging HF&M from liability for the Payment except to the person or entity to whom the Court shall adjudge is entitled to the Payment;

2. Restraining each and all of the cross-defendants by Order and Injunction of this Court during the pendency of these proceedings from instituting any action against HF&M for the recovery of the Payment;

3. Requiring each and all of the cross-defendants to answer this Complaint for Interpleader and litigate their claims among themselves for the subject funds in this action;

4. Awarding HF&M its costs and attorney's fees incurred in these proceedings; and

5. Awarding HF&M any other and further relief that this Court deems just and proper.

DATED: May 29, 2008

HIGGS, FLETCHER & MACK LLP

By: ______________________
JOHN M. MORRIS, ESQ.
MICHAEL R. GIBSON, ESQ.
Attorneys for
Defendant and Cross-Complainant
HIGGS, FLETCHER & MACK, LLP

# EXHIBIT A

WIN HEISKALA, CLS-F SBN: 71159
LAW OFFICES OF BEATRICE L. SNIDER, APC
9663 Tierra Grande, Suite 301
San Diego, CA 92126
Telephone: (858) 566-6650
Facsimile: (858) 566-7201

Attorneys for Petitioner, SARACIA SHANNAHAN

F I L E D
Clerk of the Superior Court

APR 22 2008

By: L. GARIBAY-SANCHEZ, Deputy

## SUPERIOR COURT OF THE STATE OF CALIFORNIA

## IN AND FOR COUNTY OF SAN DIEGO

In re the Marriage of

Petitioner: **SARACIA SHANNAHAN**

and

Respondent: **WILLIAM P. SHANNAHAN**

Case No. D 483710

**EX PARTE ORDER RE DISPOSITION OF INSURANCE PROCEEDS FROM AAA**

Date: April 7, 2008
Time: 1:00 p.m.
Dept: JAMS (Judge Ashworth)

This matter came on for hearing on noticed Ex Parte telephonic hearing on April 7, 2008, before The Honorable THOMAS ASHWORTH, III, (Judge, Retired). Counsel for Petitioner, WIN HEISKALA, CLS-F, of the Law offices of Beatrice L. Snider, APC, and counsel for Respondent, JOHN MORRIS of Higgs, Fletcher & Mack, LLP, and JAMES REYNOLDS were present by telephone.

Good cause appearing therefor, the Court makes the following orders:

1. The proceeds of the check from Interinsurance Exchange of the Automobile Club check #5582308 or any replacement check in the amount of $957,525.23 shall be deposited into an interest-bearing segregated client trust account of Higgs, Fletcher & Mack, LLP, on or before close of business April 11, 2008. In the event that the proceeds are not so deposited by that date, then they shall be deposited to an interest-bearing segregated client trust account with the Law Offices of Beatrice L. Snider, APC.

2. Both parties shall take all necessary action and sign all necessary documents to facilitate this Order.

3. A hearing on the disposition of the funds shall be heard May 6, 2008 at 9:00 a.m. before The Honorable Thomas Ashworth III, Judge Retired, at JAMS, 401 B Street, Suite 2100, San Diego, CA 92101. Counsel for the parties shall meet and confer regarding the briefing schedule for the hearing.

APPROVED AS CONFORMING TO COURT ORDER:

Dated: ____________

HIGGS, FLETCHER & MACK, LLP
Attorneys for Respondent

TB

By: ____________
JOHN MORRIS

**IT IS SO ORDERED:**

**Dated:** 4/11/08

**THOMAS ASHWORTH, III, Judge, Retired**
JUDGE PRO TEMPORE

***WIN HEISKALA, CFLS*** *SBN 71159*
LAW OFFICE OF BEATRICE L. SNIDER, APC
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Tel: (858) 566-6650 Fax: (858) 566-7201

Attorney for Petitioner, SARACIA SHANNAHAN

**FILED**
Clerk of the Superior Court
APR 22 2008
By: L. GARIBAY-SANCHEZ, Deputy

# SUPERIOR COURT OF CALIFORNIA
# COUNTY OF SAN DIEGO

| | |
|---|---|
| In re Marriage of: | **Case No: D 483710** |
| Petitioner: SARACIA SHANNAHAN | **ORDER ON EX PARTE RE SEGREGATION OF BROOKMEAD INSURANCE PROCEEDS** |
| and | |
| Respondent:: WILLIAM P. SHANNAHAN | **Date: April 11, 2008**<br>**Time: 8:00 a.m. (telephonic)**<br>**Dept: JAMS (Judge Ashworth)** |

This matter was heard on a duly noticed Ex Parte telephonic hearing on April 11, 2008, at 8:00 a.m. before The Honorable THOMAS ASHWORTH, III, (Judge Retired) with J.A.M.S.

**GOOD CAUSE APPEARING THEREFOR,** the Court finds and orders as follows:

1. Respondent's counsel represents that the check issued by Automobile Club of Southern California (hereafter AAA), Check No. 5582308, in the amount of $957,525.23 on Claim Number 5631342, has been destroyed and that AAA has informed the Respondent , through counsel, that a "stop payment" has been placed on the check.
2. The parties shall take all necessary steps to deposit any check or checks received by them in replacement of the above-described disbursement from AAA, to an interest bearing segregated trust account with the office of Higgs, Fletcher & Mack, counsel for Respondent, pending further orders of this Court. Such deposit shall be made within 5 days of receipt of same by either party.

IT IS SO ORDERED:

Dated: 4/14/08

THOMAS ASHWORTH, III, Judge Retired/J.A.M.S.
JUDGE PRO TEMPORE